

HOUSE BILL No. 1617

DIGEST OF INTRODUCED BILL

Citations Affected: IC 11-12-3.7-3; IC 16-31-3; IC 20-6.1-3-7; IC 22-15-5-16; IC 25-1-1.1-2; IC 31-30-1-4; IC 34-24-1-1; IC 35-38-1-7.1; IC 35-42-1-1; IC 35-45-6-1; IC 35-47-4-5; IC 35-48-4; IC 35-50-2-2.

Synopsis: Increased penalty for amphetamine offenses. Increases the penalties for possession of amphetamine and dealing in amphetamine to the same level as possession of methamphetamine and dealing in methamphetamine. Makes conforming amendments.

Effective: July 1, 2005.

Walorski, Neese

January 19, 2005, read first time and referred to Committee on Courts and Criminal Code.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1617

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 11-12-3.7-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. As used in this
3 chapter, "drug dealing offense" means one (1) or more of the following
4 offenses:

5 (1) Dealing in cocaine, a narcotic drug, **amphetamine**, or
6 methamphetamine (IC 35-48-4-1), unless the person received
7 only minimal consideration as a result of the drug transaction.

8 (2) Dealing in a schedule I, II, III, IV, or V controlled substance
9 (IC 35-48-4-2 through IC 35-48-4-4), unless the person received
10 only minimal consideration as a result of the drug transaction.

11 (3) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10),
12 unless the person received only minimal consideration as a result
13 of the drug transaction.

14 SECTION 2. IC 16-31-3-14 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) A person
16 holding a certificate issued under this article must comply with the
17 applicable standards and rules established under this article. A

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certificate holder is subject to disciplinary sanctions under subsection (b) if the state emergency management agency determines that the certificate holder:

- (1) engaged in or knowingly cooperated in fraud or material deception in order to obtain a certificate, including cheating on a certification examination;
- (2) engaged in fraud or material deception in the course of professional services or activities;
- (3) advertised services or goods in a false or misleading manner;
- (4) falsified or knowingly allowed another person to falsify attendance records or certificates of completion of continuing education courses required under this article or rules adopted under this article;
- (5) is convicted of a crime, if the act that resulted in the conviction has a direct bearing on determining if the certificate holder should be entrusted to provide emergency medical services;
- (6) is convicted of violating IC 9-19-14.5;
- (7) fails to comply and maintain compliance with or violates any applicable provision, standard, or other requirement of this article or rules adopted under this article;
- (8) continues to practice if the certificate holder becomes unfit to practice due to:
 - (A) professional incompetence that includes the undertaking of professional activities that the certificate holder is not qualified by training or experience to undertake;
 - (B) failure to keep abreast of current professional theory or practice;
 - (C) physical or mental disability; or
 - (D) addiction to, abuse of, or dependency on alcohol or other drugs that endanger the public by impairing the certificate holder's ability to practice safely;
- (9) engages in a course of lewd or immoral conduct in connection with the delivery of services to the public;
- (10) allows the certificate holder's name or a certificate issued under this article to be used in connection with a person who renders services beyond the scope of that person's training, experience, or competence;
- (11) is subjected to disciplinary action in another state or jurisdiction on grounds similar to those contained in this chapter. For purposes of this subdivision, a certified copy of a record of disciplinary action constitutes prima facie evidence of a

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disciplinary action in another jurisdiction;

(12) assists another person in committing an act that would constitute a ground for disciplinary sanction under this chapter; or

(13) allows a certificate issued by the commission to be:

(A) used by another person; or

(B) displayed to the public when the certificate is expired, inactive, invalid, revoked, or suspended.

(b) The state emergency management agency may issue an order under IC 4-21.5-3-6 to impose one (1) or more of the following sanctions if the state emergency management agency determines that a certificate holder is subject to disciplinary sanctions under subsection (a):

(1) Revocation of a certificate holder's certificate for a period not to exceed seven (7) years.

(2) Suspension of a certificate holder's certificate for a period not to exceed seven (7) years.

(3) Censure of a certificate holder.

(4) Issuance of a letter of reprimand.

(5) Assessment of a civil penalty against the certificate holder in accordance with the following:

(A) The civil penalty may not exceed five hundred dollars (\$500) per day per violation.

(B) If the certificate holder fails to pay the civil penalty within the time specified by the state emergency management agency, the state emergency management agency may suspend the certificate holder's certificate without additional proceedings.

(6) Placement of a certificate holder on probation status and requirement of the certificate holder to:

(A) report regularly to the state emergency management agency upon the matters that are the basis of probation;

(B) limit practice to those areas prescribed by the state emergency management agency;

(C) continue or renew professional education approved by the state emergency management agency until a satisfactory degree of skill has been attained in those areas that are the basis of the probation; or

(D) perform or refrain from performing any acts, including community restitution or service without compensation, that the state emergency management agency considers appropriate to the public interest or to the rehabilitation or treatment of the certificate holder.

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The state emergency management agency may withdraw or modify this probation if the state emergency management agency finds after a hearing that the deficiency that required disciplinary action is remedied or that changed circumstances warrant a modification of the order.

(c) If an applicant or a certificate holder has engaged in or knowingly cooperated in fraud or material deception to obtain a certificate, including cheating on the certification examination, the state emergency management agency may rescind the certificate if it has been granted, void the examination or other fraudulent or deceptive material, and prohibit the applicant from reapplying for the certificate for a length of time established by the state emergency management agency.

(d) The state emergency management agency may deny certification to an applicant who would be subject to disciplinary sanctions under subsection (b) if that person were a certificate holder, has had disciplinary action taken against the applicant or the applicant's certificate to practice in another state or jurisdiction, or has practiced without a certificate in violation of the law. A certified copy of the record of disciplinary action is conclusive evidence of the other jurisdiction's disciplinary action.

(e) The state emergency management agency may order a certificate holder to submit to a reasonable physical or mental examination if the certificate holder's physical or mental capacity to practice safely and competently is at issue in a disciplinary proceeding. Failure to comply with a state emergency management agency order to submit to a physical or mental examination makes a certificate holder liable to temporary suspension under subsection (i).

(f) Except as provided under subsection (a) and section 14.5 of this chapter, a certificate may not be denied, revoked, or suspended because the applicant or certificate holder has been convicted of an offense. The acts from which the applicant's or certificate holder's conviction resulted may be considered as to whether the applicant or certificate holder should be entrusted to serve the public in a specific capacity.

(g) The state emergency management agency may deny, suspend, or revoke a certificate issued under this chapter if the individual who holds or is applying for the certificate is convicted of any of the following:

- (1) Possession of cocaine, a narcotic drug, **amphetamine**, or methamphetamine under IC 35-48-4-6.
- (2) Possession of a controlled substance under IC 35-48-4-7(a).
- (3) Fraudulently obtaining a controlled substance under

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IC 35-48-4-7(b).

(4) Manufacture of paraphernalia as a Class D felony under IC 35-48-4-8.1(b).

(5) Dealing in paraphernalia as a Class D felony under IC 35-48-4-8.5(b).

(6) Possession of paraphernalia as a Class D felony under IC 35-48-4-8.3(b).

(7) Possession of marijuana, hash oil, or hashish as a Class D felony under IC 35-48-4-11.

(8) Maintaining a common nuisance under IC 35-48-4-13.

(9) An offense relating to registration, labeling, and prescription forms under IC 35-48-4-14.

(10) Conspiracy under IC 35-41-5-2 to commit an offense listed in subdivisions (1) through (9).

(11) Attempt under IC 35-41-5-1 to commit an offense listed in subdivisions (1) through (10).

(12) An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described by subdivisions (1) through (11).

(h) A decision of the state emergency management agency under subsections (b) through (g) may be appealed to the commission under IC 4-21.5-3-7.

(i) The state emergency management agency may temporarily suspend a certificate holder's certificate under IC 4-21.5-4 before a final adjudication or during the appeals process if the state emergency management agency finds that a certificate holder would represent a clear and immediate danger to the public's health, safety, or property if the certificate holder were allowed to continue to practice.

(j) On receipt of a complaint or information alleging that a person certified under this chapter or IC 16-31-3.5 has engaged in or is engaging in a practice that is subject to disciplinary sanctions under this chapter, the state emergency management agency must initiate an investigation against the person.

(k) The state emergency management agency shall conduct a factfinding investigation as the state emergency management agency considers proper in relation to the complaint.

(l) The state emergency management agency may reinstate a certificate that has been suspended under this section if the state emergency management agency is satisfied that the applicant is able to practice with reasonable skill, competency, and safety to the public. As a condition of reinstatement, the state emergency management agency

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may impose disciplinary or corrective measures authorized under this chapter.

(m) The state emergency management agency may not reinstate a certificate that has been revoked under this chapter.

(n) The state emergency management agency must be consistent in the application of sanctions authorized in this chapter. Significant departures from prior decisions involving similar conduct must be explained in the state emergency management agency's findings or orders.

(o) A certificate holder may not surrender the certificate holder's certificate without the written approval of the state emergency management agency, and the state emergency management agency may impose any conditions appropriate to the surrender or reinstatement of a surrendered certificate.

(p) For purposes of this section, "certificate holder" means a person who holds:

- (1) an unlimited certificate;
- (2) a limited or probationary certificate; or
- (3) an inactive certificate.

SECTION 3. IC 16-31-3-14.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14.5. The state emergency management agency may issue an order under IC 4-21.5-3-6 to deny an applicant's request for certification or permanently revoke a certificate under procedures provided by section 14 of this chapter if the individual who holds the certificate issued under this title is convicted of any of the following:

- (1) Dealing in or manufacturing cocaine, a narcotic drug, **amphetamine**, or methamphetamine under IC 35-48-4-1.
- (2) Dealing in a schedule I, II, or III controlled substance under IC 35-48-4-2.
- (3) Dealing in a schedule IV controlled substance under IC 35-48-4-3.
- (4) Dealing in a schedule V controlled substance under IC 35-48-4-4.
- (5) Dealing in a substance represented to be a controlled substance under IC 35-48-4-4.5.
- (6) Knowingly or intentionally manufacturing, advertising, distributing, or possessing with intent to manufacture, advertise, or distribute a substance represented to be a controlled substance under IC 35-48-4-4.6.
- (7) Dealing in a counterfeit substance under IC 35-48-4-5.
- (8) Dealing in marijuana, hash oil, or hashish under

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IC 35-48-4-10(b).

(9) Conspiracy under IC 35-41-5-2 to commit an offense listed in subdivisions (1) through (8).

(10) Attempt under IC 35-41-5-1 to commit an offense listed in subdivisions (1) through (8).

(11) A crime of violence (as defined in IC 35-50-1-2(a)).

(12) An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described under subdivisions (1) through (11).

SECTION 4. IC 20-6.1-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) On the written recommendation of the state superintendent, the board may suspend or revoke a license for:

(1) immorality;

(2) misconduct in office;

(3) incompetency; or

(4) willful neglect of duty.

However, for each suspension or revocation, the board shall comply with IC 4-21.5-3.

(b) This subsection applies when a prosecuting attorney knows that a licensed employee of a public school (as defined in IC 20-10.1-1-2) or a nonpublic school has been convicted of an offense listed in subsection (d). The prosecuting attorney shall immediately give written notice of the conviction to the following:

(1) The state superintendent.

(2) Except as provided in subdivision (3), the superintendent of the school corporation that employs the licensed employee or the equivalent authority for the nonpublic school.

(3) The presiding officer of the governing body of the school corporation that employs the licensed employee, if the convicted licensed employee is the superintendent of the school corporation.

(c) The superintendent of a school corporation, presiding officer of the governing body, or equivalent authority for a nonpublic school shall immediately notify the state superintendent when the person knows that a current or former licensed employee of the public school or nonpublic school has been convicted of an offense listed in subsection (d).

(d) The board, after holding a hearing on the matter, shall permanently revoke the license of a person who is known by the board to have been convicted of any of the following felonies:

(1) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age.

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(2) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age.

(3) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.

(4) Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.

(5) Child molesting (IC 35-42-4-3).

(6) Child exploitation (IC 35-42-4-4(b)).

(7) Vicarious sexual gratification (IC 35-42-4-5).

(8) Child solicitation (IC 35-42-4-6).

(9) Child seduction (IC 35-42-4-7).

(10) Sexual misconduct with a minor (IC 35-42-4-9).

(11) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.

(12) Dealing in or manufacturing cocaine, a narcotic drug, **amphetamine**, or methamphetamine (IC 35-48-4-1).

(13) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(14) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(15) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(16) Dealing in a counterfeit substance (IC 35-48-4-5).

(17) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10(b)).

(e) A license may be suspended by the state superintendent as specified in IC 20-6.1-4-13.

SECTION 5. IC 22-15-5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. (a) A practitioner shall comply with the standards established under this licensing program. A practitioner is subject to the exercise of the disciplinary sanctions under subsection (b) if the department finds that a practitioner has:

(1) engaged in or knowingly cooperated in fraud or material deception in order to obtain a license to practice, including cheating on a licensing examination;

(2) engaged in fraud or material deception in the course of professional services or activities;

(3) advertised services or goods in a false or misleading manner;

(4) falsified or knowingly allowed another person to falsify attendance records or certificates of completion of continuing education courses provided under this chapter;

(5) been convicted of a crime that has a direct bearing on the

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practitioner's ability to continue to practice competently;
 (6) knowingly violated a state statute or rule or federal statute or regulation regulating the profession for which the practitioner is licensed;

(7) continued to practice although the practitioner has become unfit to practice due to:

(A) professional incompetence;

(B) failure to keep abreast of current professional theory or practice;

(C) physical or mental disability; or

(D) addiction to, abuse of, or severe dependency on alcohol or other drugs that endanger the public by impairing a practitioner's ability to practice safely;

(8) engaged in a course of lewd or immoral conduct in connection with the delivery of services to the public;

(9) allowed the practitioner's name or a license issued under this chapter to be used in connection with an individual or business who renders services beyond the scope of that individual's or business's training, experience, or competence;

(10) had disciplinary action taken against the practitioner or the practitioner's license to practice in another state or jurisdiction on grounds similar to those under this chapter;

(11) assisted another person in committing an act that would constitute a ground for disciplinary sanction under this chapter; or

(12) allowed a license issued by the department to be:

(A) used by another person; or

(B) displayed to the public when the license has expired, is inactive, is invalid, or has been revoked or suspended.

For purposes of subdivision (10), a certified copy of a record of disciplinary action constitutes prima facie evidence of a disciplinary action in another jurisdiction.

(b) The department may impose one (1) or more of the following sanctions if the department finds that a practitioner is subject to disciplinary sanctions under subsection (a):

(1) Permanent revocation of a practitioner's license.

(2) Suspension of a practitioner's license.

(3) Censure of a practitioner.

(4) Issuance of a letter of reprimand.

(5) Assess a civil penalty against the practitioner in accordance with the following:

(A) The civil penalty may not be more than one thousand

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dollars (\$1,000) for each violation listed in subsection (a), except for a finding of incompetency due to a physical or mental disability.

(B) When imposing a civil penalty, the department shall consider a practitioner's ability to pay the amount assessed. If the practitioner fails to pay the civil penalty within the time specified by the department, the department may suspend the practitioner's license without additional proceedings. However, a suspension may not be imposed if the sole basis for the suspension is the practitioner's inability to pay a civil penalty.

(6) Place a practitioner on probation status and require the practitioner to:

(A) report regularly to the department upon the matters that are the basis of probation;

(B) limit practice to those areas prescribed by the department;

(C) continue or renew professional education approved by the department until a satisfactory degree of skill has been attained in those areas that are the basis of the probation; or

(D) perform or refrain from performing any acts, including community restitution or service without compensation, that the department considers appropriate to the public interest or to the rehabilitation or treatment of the practitioner.

The department may withdraw or modify this probation if the department finds after a hearing that the deficiency that required disciplinary action has been remedied or that changed circumstances warrant a modification of the order.

(c) If an applicant or a practitioner has engaged in or knowingly cooperated in fraud or material deception to obtain a license to practice, including cheating on the licensing examination, the department may rescind the license if it has been granted, void the examination or other fraudulent or deceptive material, and prohibit the applicant from reapplying for the license for a length of time established by the department.

(d) The department may deny licensure to an applicant who has had disciplinary action taken against the applicant or the applicant's license to practice in another state or jurisdiction or who has practiced without a license in violation of the law. A certified copy of the record of disciplinary action is conclusive evidence of the other jurisdiction's disciplinary action.

(e) The department may order a practitioner to submit to a reasonable physical or mental examination if the practitioner's physical or mental capacity to practice safely and competently is at issue in a

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disciplinatory proceeding. Failure to comply with a department order to submit to a physical or mental examination makes a practitioner liable to temporary suspension under subsection (j).

(f) Except as provided under subsection (g) or (h), a license may not be denied, revoked, or suspended because the applicant or holder has been convicted of an offense. The acts from which the applicant's or holder's conviction resulted may, however, be considered as to whether the applicant or holder should be entrusted to serve the public in a specific capacity.

(g) The department may deny, suspend, or revoke a license issued under this chapter if the individual who holds the license is convicted of any of the following:

(1) Possession of cocaine, a narcotic drug, **amphetamine**, or methamphetamine under IC 35-48-4-6.

(2) Possession of a controlled substance under IC 35-48-4-7(a).

(3) Fraudulently obtaining a controlled substance under IC 35-48-4-7(b).

(4) Manufacture of paraphernalia as a Class D felony under IC 35-48-4-8.1(b).

(5) Dealing in paraphernalia as a Class D felony under IC 35-48-4-8.5(b).

(6) Possession of paraphernalia as a Class D felony under IC 35-48-4-8.3(b).

(7) Possession of marijuana, hash oil, or hashish as a Class D felony under IC 35-48-4-11.

(8) Maintaining a common nuisance under IC 35-48-4-13.

(9) An offense relating to registration, labeling, and prescription forms under IC 35-48-4-14.

(10) Conspiracy under IC 35-41-5-2 to commit an offense listed in ~~clauses subdivisions~~ (1) through (9).

(11) Attempt under IC 35-41-5-1 to commit an offense listed in ~~clauses subdivisions~~ (1) through (10).

(12) An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described under ~~clauses subdivisions~~ (1) through (11).

(h) The department shall deny, revoke, or suspend a license issued under this chapter if the individual who holds the license is convicted of any of the following:

(1) Dealing in cocaine, a narcotic drug, **amphetamine**, or methamphetamine under IC 35-48-4-1.

(2) Dealing in a schedule I, II, or III controlled substance under

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1 IC 35-48-4-2.

2 (3) Dealing in a schedule IV controlled substance under
3 IC 35-48-4-3.

4 (4) Dealing in a schedule V controlled substance under
5 IC 35-48-4-4.

6 (5) Dealing in a substance represented to be a controlled
7 substance under IC 35-48-4-4.5.

8 (6) Knowingly or intentionally manufacturing, advertising,
9 distributing, or possessing with intent to manufacture, advertise,
10 or distribute a substance represented to be a controlled substance
11 under IC 35-48-4-4.6.

12 (7) Dealing in a counterfeit substance under IC 35-48-4-5.

13 (8) Dealing in marijuana, hash oil, or hashish under
14 IC 35-48-4-10(b).

15 (9) Conspiracy under IC 35-41-5-2 to commit an offense listed in
16 ~~clauses~~ **subdivisions** (1) through (8).

17 (10) Attempt under IC 35-41-5-1 to commit an offense listed in
18 ~~clauses~~ **subdivisions** (1) through (9).

19 (11) An offense in any other jurisdiction in which the elements of
20 the offense for which the conviction was entered are substantially
21 similar to the elements of an offense described under ~~clauses~~
22 **subdivisions** (1) through (10).

23 (12) A violation of any federal or state drug law or rule related to
24 wholesale legend drug distributors licensed under IC 25-26-14.

25 (i) A decision of the department under subsections (b) through (h)
26 may be appealed to the commission under IC 4-21.5-3-7.

27 (j) The department may temporarily suspend a practitioner's license
28 under IC 4-21.5-4 before a final adjudication or during the appeals
29 process if the department finds that a practitioner represents a clear and
30 immediate danger to the public's health, safety, or property if the
31 practitioner is allowed to continue to practice.

32 (k) On receipt of a complaint or an information alleging that a
33 person licensed under this chapter has engaged in or is engaging in a
34 practice that jeopardizes the public health, safety, or welfare, the
35 department shall initiate an investigation against the person.

36 (l) Any complaint filed with the office of the attorney general
37 alleging a violation of this licensing program shall be referred to the
38 department for summary review and for its general information and any
39 authorized action at the time of the filing.

40 (m) The department shall conduct a factfinding investigation as the
41 department considers proper in relation to the complaint.

42 (n) The department may reinstate a license that has been suspended

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1 under this section if, after a hearing, the department is satisfied that the
 2 applicant is able to practice with reasonable skill, safety, and
 3 competency to the public. As a condition of reinstatement, the
 4 department may impose disciplinary or corrective measures authorized
 5 under this chapter.

6 (o) The department may not reinstate a license that has been
 7 revoked under this chapter. An individual whose license has been
 8 revoked under this chapter may not apply for a new license until seven
 9 (7) years after the date of revocation.

10 (p) The department shall seek to achieve consistency in the
 11 application of sanctions authorized in this chapter. Significant
 12 departures from prior decisions involving similar conduct must be
 13 explained in the department's findings or orders.

14 (q) A practitioner may petition the department to accept the
 15 surrender of the practitioner's license instead of having a hearing before
 16 the commission. The practitioner may not surrender the practitioner's
 17 license without the written approval of the department, and the
 18 department may impose any conditions appropriate to the surrender or
 19 reinstatement of a surrendered license.

20 (r) A practitioner who has been subjected to disciplinary sanctions
 21 may be required by the commission to pay the costs of the proceeding.
 22 The practitioner's ability to pay shall be considered when costs are
 23 assessed. If the practitioner fails to pay the costs, a suspension may not
 24 be imposed solely upon the practitioner's inability to pay the amount
 25 assessed. The costs are limited to costs for the following:

- 26 (1) Court reporters.
- 27 (2) Transcripts.
- 28 (3) Certification of documents.
- 29 (4) Photo duplication.
- 30 (5) Witness attendance and mileage fees.
- 31 (6) Postage.
- 32 (7) Expert witnesses.
- 33 (8) Depositions.
- 34 (9) Notarizations.

35 SECTION 6. IC 25-1-1.1-2 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. A board, a
 37 commission, or a committee may suspend or revoke a license or
 38 certificate issued under this title by the board, the commission, or the
 39 committee if the individual who holds the license or certificate is
 40 convicted of any of the following:

- 41 (1) Possession of cocaine, a narcotic drug, **amphetamine**, or
 42 methamphetamine under IC 35-48-4-6.

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- (2) Possession of a controlled substance under IC 35-48-4-7(a).
- (3) Fraudulently obtaining a controlled substance under IC 35-48-4-7(b).
- (4) Manufacture of paraphernalia as a Class D felony under IC 35-48-4-8.1(b).
- (5) Dealing in paraphernalia as a Class D felony under IC 35-48-4-8.5(b).
- (6) Possession of paraphernalia as a Class D felony under IC 35-48-4-8.3(b).
- (7) Possession of marijuana, hash oil, or hashish as a Class D felony under IC 35-48-4-11.
- (8) Maintaining a common nuisance under IC 35-48-4-13.
- (9) An offense relating to registration, labeling, and prescription forms under IC 35-48-4-14.
- (10) Conspiracy under IC 35-41-5-2 to commit an offense listed in subdivisions (1) through (9).
- (11) Attempt under IC 35-41-5-1 to commit an offense listed in subdivisions (1) through (9).
- (12) An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described under subdivisions (1) through (11).

SECTION 7. IC 25-1-1.1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. A board, a commission, or a committee shall revoke or suspend a license or certificate issued under this title by the board, the commission, or the committee if the individual who holds the license or certificate is convicted of any of the following:

- (1) Dealing in or manufacturing cocaine, a narcotic drug, **amphetamine**, or methamphetamine under IC 35-48-4-1.
- (2) Dealing in a schedule I, II, or III controlled substance under IC 35-48-4-2.
- (3) Dealing in a schedule IV controlled substance under IC 35-48-4-3.
- (4) Dealing in a schedule V controlled substance under IC 35-48-4-4.
- (5) Dealing in a substance represented to be a controlled substance under IC 35-48-4-4.5.
- (6) Knowingly or intentionally manufacturing, advertising, distributing, or possessing with intent to manufacture, advertise, or distribute a substance represented to be a controlled substance under IC 35-48-4-4.6.

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(7) Dealing in a counterfeit substance under IC 35-48-4-5.

(8) Dealing in marijuana, hash oil, or hashish under IC 35-48-4-10(b).

(9) Conspiracy under IC 35-41-5-2 to commit an offense listed in subdivisions (1) through (8).

(10) Attempt under IC 35-41-5-1 to commit an offense listed in subdivisions (1) through (8).

(11) An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described under subdivisions (1) through (10).

(12) A violation of any federal or state drug law or rule related to wholesale legend drug distributors licensed under IC 25-26-14.

SECTION 8. IC 31-30-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) The juvenile court does not have jurisdiction over an individual for an alleged violation of:

(1) IC 35-42-1-1 (murder);

(2) IC 35-42-3-2 (kidnapping);

(3) IC 35-42-4-1 (rape);

(4) IC 35-42-4-2 (criminal deviate conduct);

(5) IC 35-42-5-1 (robbery) if:

(A) the robbery was committed while armed with a deadly weapon; or

(B) the robbery results in bodily injury or serious bodily injury;

(6) IC 35-42-5-2 (carjacking);

(7) IC 35-45-9-3 (criminal gang activity);

(8) IC 35-45-9-4 (criminal gang intimidation);

(9) IC 35-47-2-1 (carrying a handgun without a license);

(10) IC 35-47-10 (children and firearms);

(11) IC 35-47-5-4.1 (dealing in a sawed-off shotgun); or

(12) any offense that may be joined under IC 35-34-1-9(a)(2) with any crime listed in subdivisions (1) through (11);

if the individual was at least sixteen (16) years of age at the time of the alleged violation.

(b) The juvenile court does not have jurisdiction for an alleged violation of manufacturing or dealing in cocaine, a narcotic drug, **amphetamine**, or methamphetamine (IC 35-48-4-1), dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2), or dealing in a schedule IV controlled substance (IC 35-48-4-3), if:

(1) the individual has a prior unrelated conviction under

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IC 35-48-4-1, IC 35-48-4-2, or IC 35-48-4-3; or

(2) the individual has a prior unrelated juvenile adjudication that, if committed by an adult, would be a crime under IC 35-48-4-1, IC 35-48-4-2, or IC 35-48-4-3;

and the individual was at least sixteen (16) years of age at the time of the alleged violation.

(c) Once an individual described in subsection (a) has been charged with any crime listed in subsection (a)(1) through ~~(a)(15)~~, **(a)(12)**, the court having adult criminal jurisdiction shall retain jurisdiction over the case even if the individual pleads guilty to or is convicted of a lesser included offense. A plea of guilty to or a conviction of a lesser included offense does not vest jurisdiction in the juvenile court.

SECTION 9. IC 34-24-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) The following may be seized:

(1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:

(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

(i) Dealing in or manufacturing cocaine, a narcotic drug, **amphetamine**, or methamphetamine (IC 35-48-4-1).

(ii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(iii) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(iv) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(v) Dealing in a counterfeit substance (IC 35-48-4-5).

(vi) Possession of cocaine, a narcotic drug, **amphetamine**, or methamphetamine (IC 35-48-4-6).

(vii) Dealing in paraphernalia (IC 35-48-4-8.5).

(viii) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars (\$100) or more.

(C) Any hazardous waste in violation of IC 13-30-6-6.

(D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass destruction (as defined in IC 35-41-1-29.4) used to commit,

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- 1 used in an attempt to commit, or used in a conspiracy to
 2 commit an offense under IC 35-47 as part of or in furtherance
 3 of an act of terrorism (as defined by IC 35-41-1-26.5).
 4 (2) All money, negotiable instruments, securities, weapons,
 5 communications devices, or any property used to commit, used in
 6 an attempt to commit, or used in a conspiracy to commit an
 7 offense under IC 35-47 as part of or in furtherance of an act of
 8 terrorism or commonly used as consideration for a violation of
 9 IC 35-48-4 (other than items subject to forfeiture under
 10 IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):
 11 (A) furnished or intended to be furnished by any person in
 12 exchange for an act that is in violation of a criminal statute;
 13 (B) used to facilitate any violation of a criminal statute; or
 14 (C) traceable as proceeds of the violation of a criminal statute.
 15 (3) Any portion of real or personal property purchased with
 16 money that is traceable as a proceed of a violation of a criminal
 17 statute.
 18 (4) A vehicle that is used by a person to:
 19 (A) commit, attempt to commit, or conspire to commit;
 20 (B) facilitate the commission of; or
 21 (C) escape from the commission of;
 22 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
 23 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
 24 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense
 25 under IC 35-47 as part of or in furtherance of an act of terrorism.
 26 (5) Real property owned by a person who uses it to commit any of
 27 the following as a Class A felony, a Class B felony, or a Class C
 28 felony:
 29 (A) Dealing in or manufacturing cocaine, a narcotic drug,
 30 **amphetamine**, or methamphetamine (IC 35-48-4-1).
 31 (B) Dealing in a schedule I, II, or III controlled substance
 32 (IC 35-48-4-2).
 33 (C) Dealing in a schedule IV controlled substance
 34 (IC 35-48-4-3).
 35 (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
 36 (6) Equipment and recordings used by a person to commit fraud
 37 under IC 35-43-5-4(11).
 38 (7) Recordings sold, rented, transported, or possessed by a person
 39 in violation of IC 24-4-10.
 40 (8) Property (as defined by IC 35-41-1-23) or an enterprise (as
 41 defined by IC 35-45-6-1) that is the object of a corrupt business
 42 influence violation (IC 35-45-6-2).

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(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(10) Any equipment used or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4-4.

(11) Destructive devices used, possessed, transported, or sold in violation of IC 35-47.5.

(12) Cigarettes that are sold in violation of IC 24-3-5.2, cigarettes that a person attempts to sell in violation of IC 24-3-5.2, and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.2.

(13) Tobacco products that are sold in violation of IC 24-3-5, tobacco products that a person attempts to sell in violation of IC 24-3-5, and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in or manufacturing cocaine, a narcotic drug, **amphetamine**, or methamphetamine).

(2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

(3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(4) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

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(5) IC 35-48-4-6 (possession of cocaine, a narcotic drug, **amphetamine**, or methamphetamine) as a Class A felony, Class B felony, or Class C felony.

(6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

SECTION 10. IC 35-38-1-7.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7.1. (a) In determining what sentence to impose for a crime, the court shall consider:

(1) the risk that the person will commit another crime;

(2) the nature and circumstances of the crime committed;

(3) the person's:

(A) prior criminal record;

(B) character; and

(C) condition;

(4) whether the victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age;

(5) whether the person committed the offense in the presence or within hearing of a person who is less than eighteen (18) years of age who was not the victim of the offense;

(6) whether the person violated a protective order issued against the person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or IC 34-4-5.1 before their repeal), a workplace violence restraining order issued against the person under IC 34-26-6, or a no contact order issued against the person; and

(7) any oral or written statement made by a victim of the crime.

(b) The court may consider the following factors as aggravating circumstances or as favoring imposing consecutive terms of imprisonment:

(1) The person has recently violated the conditions of any probation, parole, or pardon granted to the person.

(2) The person has a history of criminal or delinquent activity.

(3) The person is in need of correctional or rehabilitative treatment that can best be provided by commitment of the person to a penal facility.

(4) Imposition of a reduced sentence or suspension of the sentence and imposition of probation would depreciate the seriousness of the crime.

(5) The victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age.

(6) The victim of the crime was mentally or physically infirm.

(7) The person committed a forcible felony while wearing a garment designed to resist the penetration of a bullet.

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- (8) The person committed a sex crime listed in subsection (e) and:
- (A) the crime created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV) and involved the sex organ of one (1) person and the mouth, anus, or sex organ of another person;
 - (B) the person had knowledge that the person was a carrier of HIV; and
 - (C) the person had received risk counseling as described in subsection (g).
- (9) The person committed an offense related to controlled substances listed in subsection (f) if:
- (A) the offense involved:
 - (i) the delivery by any person to another person; or
 - (ii) the use by any person on another person;
 - of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact;
 - (B) the person had knowledge that the person was a carrier of the human immunodeficiency virus (HIV); and
 - (C) the person had received risk counseling as described in subsection (g).
- (10) The person committed the offense in an area of a consolidated or second class city that is designated as a public safety improvement area by the Indiana criminal justice institute under IC 36-8-19.5.
- (11) The injury to or death of the victim of the crime was the result of shaken baby syndrome (as defined in IC 16-41-40-2).
- (12) Before the commission of the crime, the person administered to the victim of the crime, without the victim's knowledge, a sedating drug or a drug that had a hypnotic effect on the victim, or the person had knowledge that such a drug had been administered to the victim without the victim's knowledge.
- (13) The person:
- (A) committed trafficking with an inmate under IC 35-44-3-9; and
 - (B) is an employee of the penal facility.
- (14) The person committed the offense in the presence or within hearing of a person who is less than eighteen (18) years of age who was not the victim of the offense.
- (c) The court may consider the following factors as mitigating circumstances or as favoring suspending the sentence and imposing probation:

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(1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.

(2) The crime was the result of circumstances unlikely to recur.

(3) The victim of the crime induced or facilitated the offense.

(4) There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.

(5) The person acted under strong provocation.

(6) The person has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period before commission of the crime.

(7) The person is likely to respond affirmatively to probation or short term imprisonment.

(8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.

(9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.

(10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.

(11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.

(d) The criteria listed in subsections (b) and (c) do not limit the matters that the court may consider in determining the sentence.

(e) For the purposes of this article, the following crimes are considered sex crimes:

(1) Rape (IC 35-42-4-1).

(2) Criminal deviate conduct (IC 35-42-4-2).

(3) Child molesting (IC 35-42-4-3).

(4) Child seduction (IC 35-42-4-7).

(5) Prostitution (IC 35-45-4-2).

(6) Patronizing a prostitute (IC 35-45-4-3).

(7) Incest (IC 35-46-1-3).

(8) Sexual misconduct with a minor under IC 35-42-4-9(a).

(f) For the purposes of this article, the following crimes are considered offenses related to controlled substances:

(1) Dealing in or manufacturing cocaine, a narcotic drug, **amphetamine**, or methamphetamine (IC 35-48-4-1).

(2) Dealing in a schedule I, II, or III controlled substance

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(IC 35-48-4-2).

(3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(4) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(5) Possession of cocaine, a narcotic drug, **amphetamine**, or methamphetamine (IC 35-48-4-6).

(6) Possession of a controlled substance (IC 35-48-4-7).

(7) Dealing in paraphernalia (IC 35-48-4-8.5).

(8) Possession of paraphernalia (IC 35-48-4-8.3).

(9) Offenses relating to registration (IC 35-48-4-14).

(g) For the purposes of this section, a person received risk counseling if the person had been:

(1) notified in person or in writing that tests have confirmed the presence of antibodies to the human immunodeficiency virus (HIV) in the person's blood; and

(2) warned of the behavior that can transmit HIV.

SECTION 11. IC 35-42-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. A person who:

(1) knowingly or intentionally kills another human being;

(2) kills another human being while committing or attempting to commit arson, burglary, child molesting, consumer product tampering, criminal deviate conduct, kidnapping, rape, robbery, or carjacking;

(3) kills another human being while committing or attempting to commit:

(A) dealing in or manufacturing cocaine, a narcotic drug, **amphetamine**, or methamphetamine (IC 35-48-4-1);

(B) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2);

(C) dealing in a schedule IV controlled substance (IC 35-48-4-3); or

(D) dealing in a schedule V controlled substance; or

(4) knowingly or intentionally kills a fetus that has attained viability (as defined in IC 16-18-2-365);

commits murder, a felony.

SECTION 12. IC 35-45-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. As used in this chapter:

"Documentary material" means any document, drawing, photograph, recording, or other tangible item containing compiled data from which information can be either obtained or translated into a usable form.

"Enterprise" means:

(1) a sole proprietorship, corporation, limited liability company,

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partnership, business trust, or governmental entity; or
 (2) a union, an association, or a group, whether a legal entity or
 merely associated in fact.

"Pattern of racketeering activity" means engaging in at least two (2)
 incidents of racketeering activity that have the same or similar intent,
 result, accomplice, victim, or method of commission, or that are
 otherwise interrelated by distinguishing characteristics that are not
 isolated incidents. However, the incidents are a pattern of racketeering
 activity only if at least one (1) of the incidents occurred after August
 31, 1980, and if the last of the incidents occurred within five (5) years
 after a prior incident of racketeering activity.

"Racketeering activity" means to commit, to attempt to commit, to
 conspire to commit a violation of, or aiding and abetting in a violation
 of any of the following:

- (1) A provision of IC 23-2-1, or of a rule or order issued under
 IC 23-2-1.
- (2) A violation of IC 35-45-9.
- (3) A violation of IC 35-47.
- (4) A violation of IC 35-49-3.
- (5) Murder (IC 35-42-1-1).
- (6) Battery as a Class C felony (IC 35-42-2-1).
- (7) Kidnapping (IC 35-42-3-2).
- (8) Child exploitation (IC 35-42-4-4).
- (9) Robbery (IC 35-42-5-1).
- (10) Carjacking (IC 35-42-5-2).
- (11) Arson (IC 35-43-1-1).
- (12) Burglary (IC 35-43-2-1).
- (13) Theft (IC 35-43-4-2).
- (14) Receiving stolen property (IC 35-43-4-2).
- (15) Forgery (IC 35-43-5-2).
- (16) Fraud (IC 35-43-5-4(1) through IC 35-43-5-4(9)).
- (17) Bribery (IC 35-44-1-1).
- (18) Official misconduct (IC 35-44-1-2).
- (19) Conflict of interest (IC 35-44-1-3).
- (20) Perjury (IC 35-44-2-1).
- (21) Obstruction of justice (IC 35-44-3-4).
- (22) Intimidation (IC 35-45-2-1).
- (23) Promoting prostitution (IC 35-45-4-4).
- (24) Promoting professional gambling (IC 35-45-5-4).
- (25) Dealing in or manufacturing cocaine, a narcotic drug,
amphetamine, or methamphetamine (IC 35-48-4-1).
- (26) Dealing in a schedule I, II, or III controlled substance

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(IC 35-48-4-2).

(27) Dealing in a schedule IV controlled substance
(IC 35-48-4-3).

(28) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(29) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(30) Money laundering (IC 35-45-15-5).

(31) A violation of IC 35-47.5-5.

SECTION 13. IC 35-47-4-5 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) As used in this
section, "serious violent felon" means a person who has been convicted
of:

(1) committing a serious violent felony in:

(A) Indiana; or

(B) any other jurisdiction in which the elements of the crime
for which the conviction was entered are substantially similar
to the elements of a serious violent felony; or

(2) attempting to commit or conspiring to commit a serious
violent felony in:

(A) Indiana as provided under IC 35-41-5-1 or IC 35-41-5-2;
or

(B) any other jurisdiction in which the elements of the crime
for which the conviction was entered are substantially similar
to the elements of attempting to commit or conspiring to
commit a serious violent felony.

(b) As used in this section, "serious violent felony" means:

(1) murder (IC 35-42-1-1);

(2) voluntary manslaughter (IC 35-42-1-3);

(3) reckless homicide not committed by means of a vehicle
(IC 35-42-1-5);

(4) battery as a:

(A) Class A felony (IC 35-42-2-1(a)(5));

(B) Class B felony (IC 35-42-2-1(a)(4)); or

(C) Class C felony (IC 35-42-2-1(a)(3));

(5) aggravated battery (IC 35-42-2-1.5);

(6) kidnapping (IC 35-42-3-2);

(7) criminal confinement (IC 35-42-3-3);

(8) rape (IC 35-42-4-1);

(9) criminal deviate conduct (IC 35-42-4-2);

(10) child molesting (IC 35-42-4-3);

(11) sexual battery as a Class C felony (IC 35-42-4-8);

(12) robbery (IC 35-42-5-1);

(13) carjacking (IC 35-42-5-2);

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(14) arson as a Class A felony or Class B felony
(IC 35-43-1-1(a));

(15) burglary as a Class A felony or Class B felony
(IC 35-43-2-1);

(16) assisting a criminal as a Class C felony (IC 35-44-3-2);

(17) resisting law enforcement as a Class B felony or Class C
felony (IC 35-44-3-3);

(18) escape as a Class B felony or Class C felony (IC 35-44-3-5);

(19) trafficking with an inmate as a Class C felony
(IC 35-44-3-9);

(20) criminal gang intimidation (IC 35-45-9-4);

(21) stalking as a Class B felony or Class C felony
(IC 35-45-10-5);

(22) incest (IC 35-46-1-3);

(23) dealing in or manufacturing cocaine, a narcotic drug,
amphetamine, or methamphetamine (IC 35-48-4-1);

(24) dealing in a schedule I, II, or III controlled substance
(IC 35-48-4-2);

(25) dealing in a schedule IV controlled substance (IC 35-48-4-3);
or

(26) dealing in a schedule V controlled substance (IC 35-48-4-4).

(c) A serious violent felon who knowingly or intentionally possesses
a firearm commits unlawful possession of a firearm by a serious violent
felon, a Class B felony.

SECTION 14. IC 35-48-4-1 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) A person who:

(1) knowingly or intentionally:

(A) manufactures;

(B) finances the manufacture of;

(C) delivers; or

(D) finances the delivery of;

cocaine, a narcotic drug, **amphetamine**, or methamphetamine,
pure or adulterated, classified in schedule I or II; or

(2) possesses, with intent to:

(A) manufacture;

(B) finance the manufacture of;

(C) deliver; or

(D) finance the delivery of;

cocaine, a narcotic drug, **amphetamine**, or methamphetamine,
pure or adulterated, classified in schedule I or II;

commits dealing in cocaine, a narcotic drug, **amphetamine**, or
methamphetamine, a Class B felony, except as provided in subsection

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(b).

(b) The offense is a Class A felony if:

(1) the amount of the drug involved weighs three (3) grams or more;

(2) the person:

(A) delivered; or

(B) financed the delivery of;

the drug to a person under eighteen (18) years of age at least three

(3) years junior to the person; or

(3) the person manufactured, delivered, or financed the delivery of the drug:

(A) on a school bus; or

(B) in, on, or within one thousand (1,000) feet of:

(i) school property;

(ii) a public park;

(iii) a family housing complex; or

(iv) a youth program center.

SECTION 15. IC 35-48-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) A person who, without a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice, knowingly or intentionally possesses:

(1) cocaine (pure or adulterated);

(2) a narcotic drug (pure or adulterated) classified in schedule I or II;

(3) **amphetamine (pure or adulterated)**; or

(4) methamphetamine (pure or adulterated);

commits possession of cocaine, a narcotic drug, **amphetamine**, or methamphetamine, a Class D felony, except as provided in subsection

(b).

(b) The offense is:

(1) a Class C felony if:

(A) the amount of the drug involved (pure or adulterated) weighs three (3) grams or more; or

(B) the person was also in possession of a firearm (as defined in IC 35-47-1-5);

(2) a Class B felony if the person in possession of the cocaine, narcotic drug, **amphetamine**, or methamphetamine possesses less than three (3) grams of pure or adulterated cocaine, a narcotic drug, **amphetamine**, or methamphetamine:

(A) on a school bus; or

(B) in, on, or within one thousand (1,000) feet of:

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- 1 (i) school property;
- 2 (ii) a public park;
- 3 (iii) a family housing complex; or
- 4 (iv) a youth program center; and
- 5 (3) a Class A felony if the person possesses the cocaine, narcotic
- 6 drug, **amphetamine**, or methamphetamine in an amount (pure or
- 7 adulterated) weighing at least three (3) grams:
- 8 (A) on a school bus; or
- 9 (B) in, on, or within one thousand (1,000) feet of:
- 10 (i) school property;
- 11 (ii) a public park;
- 12 (iii) a family housing complex; or
- 13 (iv) a youth program center.
- 14 SECTION 16. IC 35-48-4-16 IS AMENDED TO READ AS
- 15 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. (a) For an offense
- 16 under this chapter that requires proof of:
- 17 (1) delivery of cocaine, a narcotic drug, **amphetamine**,
- 18 methamphetamine, or a controlled substance;
- 19 (2) financing the delivery of cocaine, a narcotic drug,
- 20 **amphetamine**, methamphetamine, or a controlled substance; or
- 21 (3) possession of cocaine, a narcotic drug, **amphetamine**,
- 22 methamphetamine, or a controlled substance;
- 23 within one thousand (1,000) feet of school property, a public park, a
- 24 family housing complex, or a youth program center, the person charged
- 25 may assert the defense in subsection (b) or (c).
- 26 (b) It is a defense for a person charged under this chapter with an
- 27 offense that contains an element listed in subsection (a) that:
- 28 (1) a person was briefly in, on, or within one thousand (1,000)
- 29 feet of school property, a public park, a family housing complex,
- 30 or a youth program center; and
- 31 (2) no person under eighteen (18) years of age at least three (3)
- 32 years junior to the person was in, on, or within one thousand
- 33 (1,000) feet of the school property, public park, family housing
- 34 complex, or youth program center at the time of the offense.
- 35 (c) It is a defense for a person charged under this chapter with an
- 36 offense that contains an element listed in subsection (a) that a person
- 37 was in, on, or within one thousand (1,000) feet of school property, a
- 38 public park, a family housing complex, or a youth program center at the
- 39 request or suggestion of a law enforcement officer or an agent of a law
- 40 enforcement officer.
- 41 (d) The defense under this section applies only to the element of the
- 42 offense that requires proof that the delivery, financing of the delivery,

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or possession of cocaine, a narcotic drug, **amphetamine**, methamphetamine, or a controlled substance occurred in, on, or within one thousand (1,000) feet of school property, a public park, a family housing complex, or a youth program center.

SECTION 17. IC 35-48-4-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17. (a) In addition to any other penalty imposed for conviction of an offense under this chapter involving the manufacture or intent to manufacture **amphetamine or** methamphetamine, a court shall order restitution under IC 35-50-5-3 to cover the costs, if necessary, of an environmental cleanup incurred by a law enforcement agency or other person as a result of the offense.

(b) The amount collected under subsection (a) shall be used to reimburse the law enforcement agency that assumed the costs associated with the environmental cleanup described in subsection (a).

SECTION 18. IC 35-50-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) The court may suspend any part of a sentence for a felony, except as provided in this section or in section 2.1 of this chapter.

(b) With respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence, unless the court has approved placement of the offender in a forensic diversion program under IC 11-12-3.7:

(1) The crime committed was a Class A or Class B felony and the person has a prior unrelated felony conviction.

(2) The crime committed was a Class C felony and less than seven (7) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class C felony for which the person is being sentenced.

(3) The crime committed was a Class D felony and less than three (3) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class D felony for which the person is being sentenced. However, the court may suspend the minimum sentence for the crime only if the court orders home detention under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum sentence specified for the crime under this chapter.

(4) The felony committed was:

(A) murder (IC 35-42-1-1);

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- 1 (B) battery (IC 35-42-2-1) with a deadly weapon or battery
- 2 causing death;
- 3 (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
- 4 (D) kidnapping (IC 35-42-3-2);
- 5 (E) confinement (IC 35-42-3-3) with a deadly weapon;
- 6 (F) rape (IC 35-42-4-1) as a Class A felony;
- 7 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A
- 8 felony;
- 9 (H) child molesting (IC 35-42-4-3) as a Class A or Class B
- 10 felony;
- 11 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or
- 12 with a deadly weapon;
- 13 (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily
- 14 injury;
- 15 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury
- 16 or with a deadly weapon;
- 17 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
- 18 weapon;
- 19 (M) escape (IC 35-44-3-5) with a deadly weapon;
- 20 (N) rioting (IC 35-45-1-2) with a deadly weapon;
- 21 (O) dealing in cocaine, a narcotic drug, **amphetamine**, or
- 22 methamphetamine (IC 35-48-4-1) if the court finds the person
- 23 possessed a firearm (as defined in IC 35-47-1-5) at the time of
- 24 the offense, or the person delivered or intended to deliver to a
- 25 person under eighteen (18) years of age at least three (3) years
- 26 junior to the person and was on a school bus or within one
- 27 thousand (1,000) feet of:
- 28 (i) school property;
- 29 (ii) a public park;
- 30 (iii) a family housing complex; or
- 31 (iv) a youth program center;
- 32 (P) dealing in a schedule I, II, or III controlled substance
- 33 (IC 35-48-4-2) if the court finds the person possessed a firearm
- 34 (as defined in IC 35-47-1-5) at the time of the offense, or the
- 35 person delivered or intended to deliver to a person under
- 36 eighteen (18) years of age at least three (3) years junior to the
- 37 person and was on a school bus or within one thousand (1,000)
- 38 feet of:
- 39 (i) school property;
- 40 (ii) a public park;
- 41 (iii) a family housing complex; or
- 42 (iv) a youth program center;

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(Q) an offense under IC 9-30-5 (operating a vehicle while intoxicated) and the person who committed the offense has accumulated at least two (2) prior unrelated convictions under IC 9-30-5;

(R) an offense under IC 9-30-5-5 (operating a vehicle while intoxicated causing death) if the person had:

(i) at least fifteen-hundredths (0.15) gram of alcohol per one hundred (100) milliliters of the person's blood, or at least fifteen-hundredths (0.15) gram of alcohol per two hundred ten (210) liters of the person's breath; or

(ii) a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood; or

(S) aggravated battery (IC 35-42-2-1.5).

(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.

(d) The minimum sentence for a person convicted of voluntary manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.

(e) Whenever the court suspends that part of an offender's (as defined in IC 5-2-12-4) sentence that is suspendible under subsection (b), the court shall place the offender on probation under IC 35-38-2 for not more than ten (10) years.

(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.

(g) A term of imprisonment imposed under IC 35-47-10-6 or IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.

(h) A term of imprisonment imposed for an offense under IC 35-48-4-6(b)(1)(B) may not be suspended.

SECTION 19. [EFFECTIVE JULY 1, 2005] IC 35-48-4-1 and IC 35-48-4-6, both as amended by this act, apply only to crimes committed after June 30, 2005.

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